

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

Civil Action No. 05-10917 PBS

The HipSaver Company, Inc.,)	
)	
Plaintiff,)	
)	
v)	
)	
J.T. Posey Company,)	
)	
Defendant)	
)	
_____)	
)	
J.T. Posey Company, Inc.,)	
)	
Counterclaim Plaintiff)	
)	
v)	
)	
The HipSaver Company, Inc. and)	
Edward L. Goodwin,)	
)	
Counterclaim Defendants)	
)	
_____)	

PLAINTIFF'S MOTION TO COMPEL DISCOVERY

Plaintiff The HipSaver Company, Inc., moves pursuant to Fed. R. Civ. P. 37 for an order compelling defendant J.T. Posey Company to comply with the Plaintiff's Request for Production of Documents duly served on August 12, 2005, and re-served with an *Errata* Correction for one of the document and materials requests on September 19, 2005.

While the Defendant has long since agreed to produce all but two of the requested documents and materials which are subject of this Motion, in fact, numerous documents

and materials have *not* been produced. The Defendant's failure to produce critical documents and materials has already led to one extension of the discovery schedule in this lawsuit and an Order from the Magistrate Judge postponing several depositions. Notwithstanding several conferences and assurances from counsel that documents and materials and supplemental discovery responses would long since have been forthcoming, the Defendant has not responded substantively. It appears that the Defendant is studiously engaged in a strategy of delay.

The grounds for this motion are set forth more fully in the accompanying memorandum.

THEREFORE, the HipSaver Company respectfully requests that this motion be granted, together with mandatory fees and costs in accordance with Fed.R.Civ.P.37(a)(4)(A).

CERTIFICATE PURSUANT TO CIVIL LOCAL RULES 7.1 and 37.1

I certify that by letters dated September 27, October 14, 2005, and October 26, 2005, and by request to confer on November 3, 2005, counsel for HipSaver has attempted to confer and resolve the issues presented in this Motion. The parties conferred finally on November 7th, and counsel for HipSaver has followed up on November 10th and again on November 16th. Notwithstanding repeated assurances from the Defendant's counsel, there has been no substantive response to the matters at issue.

Respectfully submitted,
THE HIPSAVER COMPANY, INC.
By its Attorneys,

/s/ Edward J. Dailey
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